

SECOND DIVISION

[CA-G.R. SP NO. 135512, November 13, 2014]

SUBIC BAY METROPOLITAN AUTHORITY, PETITIONER, VS. HON. RAYMOND C. VIRAY, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 75, OLONGAPO CITY, AND ASIA INTERNATIONAL AUCTION- EERS INC., RESPONDENTS.

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is a Petition^[1] for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Orders dated November 27, 2013^[2] and March 24, 2014^[3] of the Regional Trial Court (RTC), Third Judicial Region, Branch 75, Olongapo City in Civil Case No. 151-0-12 entitled "*Asia International Auctioneers, Inc., Petitioner, versus Subic Bay Metropolitan Authority, Respondent.*", the dispositive portions of which read:

a) Order dated November 27, 2013

"**WHEREFORE**, petitioner's Motion for Reconsideration is **granted**. The Order of July 22, 2013 (amended on September 18, 2013) is set aside, and the Order dated January 3, 2013 is confirmed.

SO ORDERED."

b) Order dated March 24, 2014

"**WHEREFORE**, in view of the foregoing the Motion for Reconsideration is **DENIED**.

SO ORDERED."

The facts are:

In 1992, Republic Act No. 7227 was enacted creating the Subic Special Economic Zone consisting of the City of Olongapo, the Municipality of Subic in the Province of Zambales and the lands occupied by the former Subic Naval Base. Said law also created the Subic Bay Metropolitan Authority (SBMA for brevity) to oversee the development and conversion into alternative productive uses of the Subic Special Economic Zone, now more particularly known as the Subic Bay Freeport Zone (SBFZ

for brevity). In supervising and managing the development and conversion into "alternative productive uses" of the SBFZ, SBMA was given the mandate to develop SBFZ as a *"self-sustaining, industrial, commercial and investment center to generate employment opportunities in and around the zone."* SBMA finances its own operations and the development of SBFZ from its own funds without any assistance or subsidy from the national government. However, it cannot and does not impose taxes and does not receive any internal revenue allotment. It is, however, empowered by Section 13 (b) (3) of R.A. No. 7227 and Section 10 (c) and (k) of its Implementing Rules and Regulations (IRR) to fix and impose just and reasonable rates, fares, charges and prices from its tenants for, among others, services that it provides at SBFZ. Among the services being rendered by petitioner SBMA at SBFZ are four (4) municipal services of providing: (i) Security Services or Law Enforcement (ii), Fire Protection and Prevention Services, (iii) Street Cleaning, and (iv) Street Lighting. In order to recover its expenses in providing for the four (4) services, petitioner SBMA implemented the Policy on Common Use Service Area (CUSA) Fee. Before the implementation of the Policy on CUSA Fee, the basic requirements for an administrative measure to be valid and effective were observed, viz., 1) it was promulgated pursuant to petitioner SBMA's charter and its IRR; 2) the rate of CUSA Fee is reasonable; 3) the prescribed procedures were followed; and, 4) the Policy on CUSA Fee was registered with the UP Law Center, pursuant to the requirement for its effectivity under the Administrative Code of the Philippines. The Policy on CUSA Fee was approved by petitioner SBMA's Board of Directors on April 13, 2012, however, it was only on August 3, 2012 that the same was finally approved for implementation.

Private respondent Asia International Auctioneers, Inc., (AIA for brevity) a corporation engaged in the business of importation, trading and auctioning of used motor vehicles, is a current tenant/lessee of petitioner SBMA. In connection with the implementation of the Policy on CUSA Fee, private respondent AIA was charged for its share of the costs incurred by petitioner SBMA for providing for four (4) of the several municipal services that the latter directly provides at SBFZ. On December 13, 2012 private respondent AIA filed with the Regional Trial Court (RTC) of Olongapo City a Petition^[4] for Injunction with Application for TRO and Writ of Preliminary Injunction against petitioner SBMA, seeking among others, to enjoin the latter from assessing or continuing with the assessment and/or collection of the CUSA Fee. Acting on the application for the issuance of a temporary restraining order, the RTC of Olongapo City, Branch 72 issued on December 17, 2012 an Order^[5] with the following disposition:

"IN VIEW THEREOF, the application for the issuance of temporary restraining order is hereby granted. Accordingly, the respondent SBMA, its agents, representatives, or anyone acting for and in its behalf are temporarily enjoined from implementing or continuing to implement by causing the assessment, and collection of CUSA fees on the petitioner pursuant to SBMA Resolution No. 12-08-45 for the period starting December 2012 onwards, for a period of twenty (20) days.

SO ORDERED."

On the same day, petitioner SBMA filed a motion to inhibit the Presiding Judge of

RTC of Olongapo City Branch 72, claiming that it had reservations that he will not be able to hear and act upon the instant case with utmost objectivity. Also, on the same day, the parties agreed to submit, as they later filed, their respective position papers,^[6] in lieu of testimonial evidence, in support of their respective stands on private respondent AIA's prayer for the issuance of a writ of preliminary injunction. In an Order^[7] dated January 3, 2013, RTC of Olongapo City Branch 72 resolved private respondent AIA's prayer for injunctive relief, in this wise:

"WHEREFORE, premises considered, the Court hereby GRANTS the prayer for the issuance of a Writ of Preliminary Injunction to enjoin and restrain respondent Subic Bay Metropolitan Authority from implementing or enforcing SBMA Resolution No. 12-08-4505 on the Imposition of the Common Use Service Area (CUSA) Fee upon the petitioner Asia International Auctioneers, Inc. (AIA) starting December 2012 onwards pending the resolution of the main case for injunction by the Court, provided that the petitioner will post an injunction bond in the amount of One Million (P1,000,000.00) Pesos.

SO ORDERED."

On January 18, 2013, petitioner SBMA filed a Motion for Reconsideration^[8] of the Order dated January 3, 2013. In an Order^[9] dated January 25, 2013, the Presiding Judge of RTC of Olongapo City, Branch 72 inhibited himself from further hearing the case. The case was subsequently re-raffled to RTC of Olongapo City, Branch 74, which, in an Order^[10] dated July 22, 2013, resolved petitioner SBMA's motion for reconsideration of the Order dated January 3, 2013 in the following manner:

"**WHEREFORE**, in view of the foregoing, the ORDER dated January 3, 2013 is set aside and the prayer for the issuance of writ of preliminary injunction by the petitioner is **DENIED**.

SO ORDERED."

On August 29, 2013, private respondent AIA filed its Motion for Reconsideration^[11] of the Order dated July 22, 2013. However, the Presiding Judge of RTC of Olongapo City, Branch 74 did not resolve said motion. Instead, she voluntarily inhibited herself from further handling the case, citing private respondent AIA's allegation about her "bias and her desire to please respondent SBMA for issuing the Order under consideration with undue haste." The case was again re-raffled, this time to public respondent Judge of RTC of Olongapo City, Branch 75, who issued the first assailed Order on November 27, 2013. Petitioner SBMA's Motion for reconsideration^[12] of the Order dated November 27, 2013 was denied in the second assailed Order dated March 24, 2014. Hence, this petition based on this lone ground:

THE COURT A *QUO* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDER UPHOLDING THE ISSUANCE OF THE WRIT

OF PRELIMINARY INJUNCTION IN FAVOR OF RESPONDENT AIA WHEN
THE REQUISITES FOR THE ISSUANCE OF THE INJUNCTIVE WRIT ARE
LACKING.

The petition is meritorious.

Petitioner SBMA argues that: private respondent AIA is not entitled to a writ of preliminary injunction, since it failed to prove that it has a clear and unmistakable right that was violated and that there was an urgent necessity for its issuance; the issuance and implementation of the Policy on CUSA fee were in accordance with the express powers granted to petitioner SBMA under R.A. No. 7227 and its IRR, thus it is valid and legal; specifically, under Section 13 (b) (3) of R.A. No. 7227, petitioner SBMA is authorized to "undertake and regulate the establishment, operation and maintenance of utilities, other services xxx in the Subic Special Economic Zone xxx, and to fix just and reasonable rates, fares, charges and other prices therefor."; thus, in the exercise of its powers and functions under R.A. No. 7227 and its IRR, it formulated and came up with the Policy on CUSA Fee to charge SBMA's direct tenants of their proportionate shares on costs incurred by the latter for four (4) services that it directly provides, namely: street lighting, street cleaning, law enforcement and maintenance of firefighting facilities; said Policy on CUSA Fee is also in full accord with Administrative Order No. 31 which took effect on October 1, 2012 directing and authorizing the heads of all departments, bureaus, commissions, agencies, offices and instrumentalities of the National Government, including Government Owned and Controlled Corporations, which include SBMA, to rationalize the rates of their existing fees and charges, and if found necessary, increase such rates and impose new fees and charges; the provisions of R.A. No. 7227 and its IRR, including Administrative Order No. 31 are incorporated in the lease agreements between petitioner SBMA and private respondent AIA, thus the latter is deemed to have recognized the power of the former to implement the Policy on CUSA Fee; the issuance by petitioner SBMA of the Policy on CUSA Fee enjoys the presumption of regularity, in the absence of evidence to the contrary, for which reason, public respondent Judge should have upheld its validity and effectivity; petitioner SBMA's interpretation and application of the provisions of R.A. No. 7227 and its IRR deserve great respect and should ordinarily control the construction of statutes by the court, unless it is clearly shown to be in sharp conflict with governing statutes, the Constitution and other laws; public respondent Judge's finding that private respondent AIA would suffer irreparable injury which is incapable of pecuniary estimation is a mere speculation, in the absence of proof to the contrary; on the contrary, the CUSA fee to be billed is fixed in nature and in cases where surcharges and penalties were to be imposed, the amount is still quantifiable, thus the damages cannot be considered as grave and irreparable as contemplated by law for the issuance of a writ of injunction; and, contrary to the finding of public respondent Judge, there is no threatened cancellation of the lease agreement with private respondent AIA if it fails to pay the CUSA Fee since the first offense would only subject it to payment of surcharges and interests and, while continuous non-payment may eventually lead to cancellation of the lease agreement, the same does not warrant the issuance of a writ of injunction since said cancellation is not the immediate injury or damage being claimed by private respondent AIA.

In its Comment,^[13] private respondent AIA counters that: the two (2) requisites for the issuance of a writ of preliminary injunction in this case exist, namely: (1) the

existence of a clear and unmistakeable right that must be protected, and (2) an urgent and paramount necessity for the writ to prevent serious damage; private respondent AIA has a right to the continuous use and possession of all its leased properties and conduct its business operations thereon, it being a holder of valid and subsisting Lease Agreements, Certificate of Tax Exemption, Certificate of Registration and Building Permit to Operate, which are enforceable against petitioner SBMA and could not be revoked without compliance with substantive and procedural due process; petitioner SBMA could not take refuge from R.A. No. 7227 and its IRR for its unilateral and arbitrary imposition and enable it to simply stop private respondent AIA's business operations in the event of non-payment thereof pending resolution of the issues being raised against said imposition; said unilateral and arbitrary imposition is violative of the principle of "mutuality of contract" as embodied in the lease agreements; Administrative Order No. 31 which is also being invoked by petitioner SBMA was issued on October 1, 2012, while Resolution No. 12-08-4505 was issued on August 3, 2012 or six (6) months prior to the issuance of said administrative order, thus petitioner SBMA could not claim authority thereunder; petitioner SBMA did not comply with the publication, hearing and public consultation requirements under the Revised Administrative Code before it implemented Resolution No. 12-08-4505; private respondent AIA never recognized the power of petitioner SBMA to implement the Policy on CUSA Fee and/or impose CUSA Fee, which is a form of tax that petitioner SBMA has no authority to impose under R.A. No. 7227; there is ample evidence to overthrow the presumption of regularity and validity of petitioner SBMA's Policy on CUSA Fee as embodied in Resolution No. 12-08-4505 since it did not undergo the required publication, hearing and public consultation as required by the Revised Administrative Code; in this case, private respondent AIA has clearly established an unmistakeable right with its valid and subsisting Lease Agreements, Certificate of Registration, Certificate of Tax Exemption and Business Permit to Operate on which its continuous use and enjoyment of its leased properties and business operations are heavily dependent; and, with the imposition of the Policy on CUSA Fee and its corresponding penalties, private respondent AIA is set to close down its business and lay off its workers.

The sole issue in this case is whether or not public respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted private respondents AIA's motion for reconsideration of the Order dated July 22, 2013, thereby affirming and reinstating the Order dated January 3, 2013 which granted private respondent AIA's application for the issuance of a writ of preliminary injunction.

At the outset, it bears to note that under R.A. No. 7227, otherwise known as the Bases Conversion Development Act, it was a declared policy of said law to develop the Subic Special Economic Zone into a "self-sustaining, industrial, commercial, financial and investment center to attract and promote productive foreign investments. Under Section 13 (b) (3) of R.A. No. 7227, SBMA was granted the following authority:

"(3) To undertake and regulate the establishment, operation and maintenance of utilities, other services and infrastructure in the Subic Special Economic Zone including shipping and related business, stevedoring and port terminal services or concessions, incidental thereto and airport operations in coordination with the Civil Aeronautics Board